

June 28, 2005

Helen Holmes Peak, City Attorney  
City of San Marcos  
1 Civic Center Drive  
San Marcos, CA 92069-2918

**Re: Your Request for Informal Assistance**  
**Our File No. I-05-065**

Dear Ms. Peak:

This letter is in response to your request for advice on behalf of the City of San Marcos regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> We are providing you informal assistance because you have a duty to advise the City. However, you have not named any officials.<sup>2</sup> This letter should not be construed as assistance on any conduct that may have already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission ("Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Govt. Code section 83114.)

### QUESTIONS

1. May a member of the San Marcos City Council vote on his or her own appointment to an unsalaried position on a joint powers authority where the only payment the official receives from the position is a stipend and the official waives the stipend?
2. Would the appointed city councilmember be prohibited from participating in decisions relating to reimbursement of expenses incurred by the councilmember during the course of his or her work for the joint powers authority?

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<sup>1</sup>Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All statutory references are to the Government Code unless otherwise indicated. All regulatory references are to Title 2 of the Code of Regulation unless otherwise indicated.

<sup>2</sup>Informal assistance does not confer the immunity provided by a Commission opinion or formal written advice under section 93114. (Regulation 18329(c)(3), copy enclosed.)

## **CONCLUSIONS**

1. Yes. If the official waives the stipend, and there are no other financial effects on the official resulting from the governmental decision to appoint him or her, the official may vote on his or her own appointment.

2. Yes. The appointed city councilmember is prohibited from participating in any governmental decision to reimburse his or her expenses incurred for serving in the appointed position if the amount of the reimbursement would total \$250 or more in a 12-month period.

## **FACTS**

The City of San Marcos (the “City”) is a member of a number of joint powers agencies and annually appoints one of its own members to serve as its representative on such agencies. For example, the City is a member of the San Diego Association of Governments as well as the North San Diego County Transit Development Board. Each membership carries a stipend that is paid to the city councilmember who is appointed to that agency. In our telephone conversation, you indicated that the stipend is paid on the basis of each meeting attended. You also indicated that while normally members are entitled to mileage reimbursement for travel, this reimbursement is not provided to City officials who are given a monthly car allowance, as the city councilmembers are. Accordingly, the only payment an official receives for serving on one of these joint powers authorities is the per-meeting stipend.

## **ANALYSIS**

### **POTENTIAL CONFLICT OF INTEREST**

The Act’s conflict of interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

The general rule is that a conflict of interest exists whenever a public official makes a governmental decision which has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

As members of the San Marcos City Council, each councilmember is a public official under the Act. (Section 82048.) Because each councilmember will be called upon to make governmental decisions considering appointments to certain joint powers authorities, they will be making, participating in making, or influencing a governmental decision.

A public official has a financial interest in a decision within the meaning of section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated economic interests, including:

- An economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more (§ 87103(a); reg. 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d); regulation 18703.1(b));
- An economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b); regulation 18703.2);
- An economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); regulation 18703.3);
- An economic interest in any source of gifts to him or her if the gifts aggregate to \$360 or more within 12 months prior to the decision (Section 87103(e); regulation 18703.4);
- An economic interest in his or her personal finances, including those of his or her immediate family -- this is the “personal financial effects” rule (Section 87103; regulation 18703.5).

Under the facts you have presented, the appointment to the position carries a stipend for each meeting attended. Normally, this stipend would constitute an economic interest in the appointed official’s personal finances and would be material if it amounted to \$250 or more in any 12-month period. (*Thorson* Advice Letter, No. I-03-287.) However, if the stipend is waived by the official, and the official receives no remuneration for serving in the position, there will be no economic interest to trigger potential disqualification on the decision to appoint. Absent the economic interest, there is no conflict of interest presented.

On the other hand, in the event reimbursement decisions come before the city council regarding expenses incurred by the appointed official in serving on the joint powers agency, the “personal financial effects” rule would prohibit him or her from participating in the decision if it is reasonably foreseeable that there would be a material financial effect, (\$250 or more in any 12-month period), on the his or her personal finances as a result of the decision. (Section 87100, regulation 18705.5(a); *Thorson, supra.*) In that event, the public official would have a conflict of interest and may not participate in the governmental decision.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: William J. Lenkeit  
Counsel, Legal Division

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